

COMPLAINT 2007 – N0. 5

In Re Hinkle

REASONABLE CAUSE DETERMINATION AND ORDER Use of Public Resources to Promote Ballot Proposition

January, 2008

I. Nature of the Complaint

Rep. Bill Hinkle notified the Legislative Ethics Board (Board) by e-mail on October 25, 2007 that he had used public resources to provide a single letter of support on behalf of a local, school bond levy election. Those resources are identified as legislative stationery, legislative e-mail and Rep. Hinkle's Legislative Assistant (LA).

In response to the Representative's notification the Board has filed a complaint pursuant to RCW 42.52.410 of the Ethics Act (Act) which provides in pertinent part:

(1)...

(2) If it has reason to believe that any person has been engaged or is engaging in a violation of this chapter or rules adopted under it, an ethics board may issue a complaint.

II. Stipulation as to Facts and Conclusions

Board Rule 1(H) provides that a complaint may be settled by stipulation. Rep. Hinkle's e-mail to the Board, accompanied by a copy of the letter of support for the levy election, is accepted as a stipulation of facts and legal conclusions.

III. Relevant Statute

RCW 42.52.180 – Use of Public Resources for political campaigns.

- (1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

IV. Facts

A constituent and member of a local school board requested Rep. Hinkle's support of a pending ballot measure and he agreed. The constituent forwarded an e-mail draft to the Representative's legislative e-mail address. The LA forwarded the draft to the Representative's personal e-mail address. He approved the text, which was to be eventually published in a local newspaper, and instructed his LA to return the letter to the constituent who was in a "rush" to receive the response. Apparently unbeknownst to the Representative the LA placed the approved text on state letterhead and sent it directly to the newspaper. Rep. Hinkle admits his actions were contrary to the Act and that he failed in his oversight responsibility.

V. Determination of Penalty

The Board determines that the violation does not justify imposition of a monetary penalty. By this order the Board is issuing a letter of instruction to Rep. Hinkle, which clarifies that this conduct is a violation of the Act and directs that such activity not be repeated.

VI. Order

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Rep. Hinkle has violated RCW 42.52.180 and shall be penalized by a letter of instruction; and that this order is served on him as the letter of instruction.

David R. Draper – Vice Chair

Date:

Board members Donna L. McKereghan and Representative Jamie Pedersen dissent and have approved the following comments.

In determining the appropriate sanction in this matter, the majority correctly considered the negligible monetary cost and nature of this violation under Board Rule 5, relative to the use of state stationery. However, their decision did not give adequate weight to the "aggravating circumstances" noted in Rule 5, sections 3(d) and 3(f). Specifically, the majority decision did not give adequate weight to the legislator's "significant official, management or supervisory responsibility" and the fact he "incurred no other sanctions as a result of the violation."

The instructions for the mailing of the letter were given to a legislative assistant who was new to her position and new to employment in the public sector. It is reasonable to believe that a busy legislator inadvertently and accidentally forgot these factors in failing

to note that state letterhead should not have been used for the letter. If this had been the full extent of the violation, a letter of instruction would have been adequate.

However, a seasoned legislator instructed a legislative assistant to compose a letter that should not have been composed on state time or using state equipment. It is clear that this type of letter violates the Ethics Act and legislators have been previously advised and instructed on this point. By virtue of his “significant official, management or supervisory responsibility,” the legislator also placed his first term legislative assistant in peril of being found in violation of the Ethics Act. In instructing his legislative assistant to act in a way that violated the Ethics Act, the legislator committed a violation that was both direct and indirect.

Since the legislator has incurred no other sanctions as a result of this violation, we conclude that a letter of instruction, being the least of the sanctions permitted by law, is inadequate and that the more serious sanction of a letter of formal reprimand should have been levied.